APPENDIX A

PERTINENT PORTIONS OF ANSWER FILED BY DEFENDANT (PETITIONER HERE) IN COURT OF COMMON PLEAS, HAMILTON COUNTY, OHIO:

ANSWER

(Filed January 2, 1953)

* * * * * *

Defendant admits that on or about the sixteenth day of April, 1951, in case No. 140311, in chancery, on the docket of the Circuit Court of the Eleventh Judicial District, in and for Dade County, Florida, he filed a complaint in which he prayed for a divorce from plaintiff and in which complaint he made the allegations set forth on the second page of plaintiff's amended petition and admits that he appeared before a special master in chancery to whom said cause had been referred by said court and gave his testimony, tending to prove said allegations; and that thereafter said special master filed with said court his report, incorporating therein a transcript of the defendant's said testimony, in which report said special master found that this defendant was entitled to a decree for divorce; and that thereupon said cause came on to be heard by said court, upon said complaint, the testimony taken before the special master and upon the master's report, upon consideration whereof, on or about October 2, 1951, entered a decree granting a divorce in favor of this defendant from plaintiff. Defendant denies that the allegations set forth in his complaint in his suit for divorce as aforesaid were false; denies that the testimony that he gave in said cause was false, but on the contrary, says that said allegations and testimony were true.

Defendant denies that plaintiff was not served with summons in said action pending in the Dade county Circuit Court, said defendant having been duly and legally served

with summons in said action, according to the law of the state of Florida, and that by reason thereof said court had full and complete jurisdiction over the subject matter of said action and over the persons of this defendant and plaintiff.

APPENDIX B

PERTINENT PORTION OF DEFENDANT'S EXHIBIT 3 IN COURT OF COMMON PLEAS, HAMILTON COUNTY, OHIO:

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA, IN CHANCERY

No. 140,311-H

RAYMOND C. ARMSTRONG, also known as Ray Armstrong,

Plaintiff,

v.

MARY R. ARMSTRONG,

Defendant.

FINAL DECREE

THIS CAUSE COMES ON TO BE HEARD upon the Bill of Complaint, the testimony taken before the Special Master, the Honorable John W. Prunty, and upon the Master's Report.

It appears that due and proper service by publication has been effected against the defendant, MARY R. ARMSTRONG, and that a decree pro confesso has been duly and properly entered for failure of said defendant to plea or answer in this cause.

Upon consideration of the above, it is, therefore, CONSIDERED, ORDERED, ADJUDGED AND DECREED:

1. That this Court has jurisdiction over the parties and the subject matter involved herein.

2. That the equities are with the plaintiff.

3. That a decree of divorce a vinculo matrimonii is hereby entered in favor of the plaintiff, RAYMOND C. ARMSTRONG, also known as Ray Armstrong, against the defendant, MARY C. ARMSTRONG.

4. That RAYMOND C. ARMSTRONG, also known as Ray Armstrong, is hereby decreed to be the owner of that certain property situate in Dade County, State of Florida, and more particularly described as follows:

> Lots TWELVE (12) and THIRTEEN (13), Block ELEVEN (11) of SPRING GARDEN, according to the Plat thereof, recorded in Plat Book 5, at page 38 of the Public Records of Dade County, Florida.
>
> TOGETHER WITH the building situate thereon and all furniture and fixtures contained therein.

And the said MARY R. ARMSTRONG, her heirs, successors, personal representatives, grantees or assigns, her agents, servants or attorneys or anyone on her behalf, be and the same are hereby enjoined and restrained from claiming or asserting any claim of title to said property from the date of this decree, and the said title be and the same is hereby quieted and forever set at rest in the said RAYMOND C. ARMSTRONG, also known as Ray Armstrong, as against any claim of the said MARY R. ARMSTRONG or anybody claiming by or through her.

It appears from the evidence and is found by the Master that the defendant's action shows a total disregard of any responsibility or duty as a wife in relationship to her husband, and sustains the conclusion that the said MARY R. ARMSTRONG has for many years attempted to gain possession and control of her husband's estate by any means or methods at her command regardless of good faith or regardless of the legality of such moves.

It appears that the husband has been deprived of stocks and bonds and moneys by the illegal action of the wife. The testimony shows and the Court so finds that the defendant has wrongfully taken from the possession of the plaintiff stocks and bonds approximately in the aggregate amount of between $90,000 and $100,000 which are in the name of the plaintiff; and in addition thereto, the wife has taken large sums of money from the joint bank account of the plaintiff and defendant.

In Florida a wife may be guilty of conversion or even embezzlement of her husband's property as held by the Supreme Court of Florida in *State* v. *Herndon*, 27 So. (2d) 833, 158 Fla. 115. The Court, therefore, finds that the stock certificates and bonds registered in the name of the plaintiff, the possession of which has been taken by the defendant against the consent of the plaintiff, are the property of the plaintiff, and the defendant is hereby directed and specifically ordered to return the said stock certificates and bonds to the plaintiff within fifteen (15) days from the date of the entry of this decree or be subject to an order for contempt and such other relief that may be deemed proper by this Court.

This Court takes recognition of the fact that litigation is now pending in the State of Ohio relative to the recovery of these stocks and bonds as well as the settlement of other matters concerning property rights between the parties. This Court recognizes that the Courts of Ohio will have the ultimate determination of the question of property rights where the property itself is in the State of Ohio, but in that regard this Court makes a specific finding that both the plaintiff and the defendant herein were citizens and residents of the State of Florida and had been for many years, the matrimonial domicile was the State of Florida, and that when the defendant left the matrimonial domicile in October of 1950, she did so without cause or without the

legal right to separate and set up her own domicile. Under those circumstances the Court finds that the wife defendant; MARY R. ARMSTRONG, did not have the right to separate and claim a separate legal domicile and in truth and in fact, her domicile was that of her husband.

This Court, therefore, finds the defendant has not come into this Court in good faith or made any claim to the equitable conscience of the Court and has made no showing of any need on her part for alimony. It is, therefore, specifically decreed that no award of alimony be made to the defendant and that the legal and equitable title to the real property above described was vested in the plaintiff as of the date of the purchase of the same by the plaintiff and the said legal title to said property be and the same is hereby vested in fee simple absolute in the plaintiff, RAYMOND C. ARMSTRONG, also known as Ray Armstrong, without further deed or conveyance from the defendant.

The defendant, MARY R. ARMSTRONG is further enjoined and restrained from interfering with the person or the property of the plaintiff.

The Court retains jurisdiction for the purpose of enforcing the terms and conditions of this decree.

DONE and ORDERED at Miami, Florida, this the 2nd day of October, A. D. 1951.

/s/ JOE H. MORRIS,
Circuit Judge.

APPENDIX C

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

No. A-131101

MARY R. ARMSTRONG,

Plaintiff,

v.

RAYMOND C. ARMSTRONG, GENERAL MOTORS CORPORATION, a Delaware Corporation, STANDARD BRANDS, INCORPORATED, a Delaware Corporation, HUDSON MOTOR CAR COMPANY, a Michigan Corporation, MURRAY CORPORATION OF AMERICA, a Delaware Corporation, NORTH AMERICAN AVIATION, INCORPORATED, a Delaware Corporation, TRANSCONTINENTAL & WESTERN AIR, INCORPORATED, a Delaware Corporation,

Defendants.

JUDGMENT ENTRY DENYING DIVORCE AND AWARDING ALIMONY AND EXPENSES TO PLAINTIFF

(Entered July 18, 1953)

This cause came on to be heard on the amended petition, the answer of Raymond C. Armstrong, the reply of the plaintiff and the testimony of the parties and their witnesses, and the Court being fully advised finds the plaintiff, Mary R. Armstrong, was a resident of the State of Ohio for more than one (1) year and of the County of

Hamilton for more than ninety (90) days next preceding the commencement of this action; and that plaintiff, and the defendant, Raymond C. Armstrong, were married at Cincinnati, Ohio, on the 18th day of June, 1917, and that no children have been born of said marriage.

The Court further finds that on October 2, 1951, the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, in case No. 140311-H, in Chancery, pending in said Court, entered a decree granting a divorce a vinculo matrimonii in favor of Raymond C. Armstrong and against Mary R. Armstrong, in which action the plaintiff here, Mary R. Armstrong, neither entered in appearance nor was personally served with summons.

The Court further finds from all of the evidence in this cause that plaintiff, Mary R. Armstrong, were it not for said Florida decree, would be entitled to a judgment granting to her a divorce in this action, and that this Court is required to, and does give full faith and credit to said Florida decree and is thereby required to, and does deny the prayer of the plaintiff, Mary R. Armstrong, for a divorce.

The Court further finds that the defendant, Raymond C. Armstrong, is the owner of property described as follows:

1. Lots 12 and 13, Block 11 of Spring Garden, according to the Plat thereof recorded in Plat Book 5, at page 38, of the Public Records of Dade County, Florida;

2. All the furniture, household goods and the fixtures contained in the residence situate on the lots described in the foregoing paragraph;

3. All lots in the name of Raymond C. Armstrong (not including lots jointly owned with plaintiff), in the Addition to Woodlawn Terrace Subdivision, recorded in Plat Book 33, pages 4 and 5, of the Hamilton County, Ohio, Records;

4. Ten (10) acres of land in the Ruscon Colony Farm in Tampa, Florida;

5. About Twenty (20) acres of land in the Isle of Pines;

6. The shares of capital stock described in plaintiff's amended petition including stock dividends heretofore declared thereon and unpaid dividends heretofore declared thereon.

and that the plaintiff, Mary R. Armstrong, is entitled to alimony as prayed for in her amended petition and, therefore, awards to her out of the foregoing property and out of property hereinafter described in her possession, heretofore claimed by said defendant as alimony, the following:

1. That she shall have and retain as her own property whatever balance remains in her possession of the moneys withdrawn by her in the month of July, 1948, from the joint bank accounts of the parties in the Cincinnati Bank and Trust Company, The First National Bank of Miami, Florida, and The Loveland National Bank of Loveland, Ohio, together with the cash withdrawn from the safe deposit box in the joint names of the parties in Miami, Florida, and the United States Savings bonds which she took into her possession, all of the foregoing being more fully described on page 4 of the answer of the defendant, Raymond C. Armstrong; and the said defendant is hereby deprived of any claim to or ownership in said withdrawals, cash and bonds;

2. That she shall have and retain as her own all jewelry now in her possession consisting of 1 Ladies diamond ring, 1 Ladies watch with 109 diamonds, 1 fancy ring platinum top gold shank, 1 diamond bracelet with 70 diamonds, 1 diamond brooch with 23 diamonds,

1 diamond brooch with 10 diamonds, 1 cocktail ring with diamond sapphire, 1 diamond ring with center diamond and 1 necklace, and the defendant, Raymond C. Armstrong, is hereby deprived of any other claim to or ownership in the jewelry referred to in page 4 of his answer;

3. That plaintiff shall have and the defendant, Raymond C. Armstrong, is hereby ordered to cause to be transferred to her one thousand two hundred and fifty (1,250) shares of the $5.00 par value capital stock of General Motors Corporation, together with any dividend or dividends which may be declared on said number of shares after the entering of this judgment and prior to the transfer of said shares to plaintiff. In the event the defendant, Raymond C. Armstrong, fails to cause said shares to be so transferred to plaintiff, such failure, when this judgment becomes final, may be reported to the Court and an application made for such order or orders as may be necessary to enforce a compliance with this order. When the said shares shall have been transferred the remaining shares of capital stock of the various defendant corporations as described in plaintiff's amended petition, shall be delivered to the defendant, Raymond C. Armstrong, free of any claim by the plaintiff thereto.

Upon the application of the plaintiff for an allowance to her for her attorney fee and expenses, it is ordered that the defendant, Raymond C. Armstrong, pay to the plaintiff the amount of Two Thousand Five Hundred Dollars ($2,500.00) for such expenses.

It is further ordered that the plaintiff and defendant, Raymond C. Armstrong, shall each pay one half (½) of the costs herein.

Each of the parties is hereby allowed an exception.

APPENDIX D

IN THE
COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO

Hamilton County, No. 7826

MARY R. ARMSTRONG,
Plaintiff-Appellee,

v.

RAYMOND C. ARMSTRONG,
Defendant-Appellant;

GENERAL MOTORS CORPORATION, et al.,
Defendant-Appellees.

APPEAL ON QUESTIONS OF LAW, FROM COURT OF COMMON PLEAS, HAMILTON COUNTY, OHIO

(Entered March 8, 1954)

MR. WALTER K. SIBBALD, for *Plaintiff-Appellee,*
MESSRS. GORMAN, SILVERSTEEN & DAVIS,
for *Defendant-Appellant.*

MATTHEWS, P. J.:

The defendant, Raymond C. Armstrong, in this appeal challenges the validity of a judgment for alimony rendered in favor of the plaintiff. The plaintiff, by her cross-appeal, challenges the validity of the Court's judgment denying a divorce to her.

The trial took place on the plaintiff's amended petition and the defendant's answer.

In the amended petition, the plaintiff alleged that the defendant had been guilty of gross neglect of duty and extreme cruelty which forced her to separate from him in October, 1950, and that in April, 1951, he filed an action in the Circuit Court of the Eleventh Judicial District in and for Dade County, Florida, in which he falsely charged that she was wholly without business training at and prior to their marriage, that during all of their marriage life of 34 years she had never shared in any business activities with him, that she had contributed nothing to the enhancement of his material assets, that she had an ungovernable temper and had shot at him with a revolver, that as early as 1943 she began to plan leaving him, that she had wrongfully induced him to place bank accounts and safety deposit boxes in their joint names for the purpose of thereafter taking them into her exclusive possession and did on their separation on a later date take certain amounts of money and bonds and stocks into her exclusive possession, and sought to convert them to her own use, that, upon a reconciliation in 1948, she had promised to return the money and other property to him, but had not done so, with the exception of about $7,000.00, which she returned to their joint bank account, that the reconciliation failed wholly because of her wrongdoing, and in October, 1950, she left their residence in Miami, Florida, and refused to disclose where she was living thereafter.

She also alleged that the defendant, Raymond C. Armstrong, made oath to the foregoing allegations, knowing them to be false and that the prosecution of said action based thereon would perpetrate a fraud upon said court, nevertheless he appeared before a special master in said cause and testified falsely as aforesaid, and the Special Master reported to the court that he was entitled to a divorce after an agreement had been reached between the defendant Armstrong and the Special Master, setting the amount of the Special Master's fee.

The plaintiff also alleged that, without service of summons upon her, and without her appearance therein, said action came on for hearing upon the complaint of the plaintiff (the defendant Armstrong herein) and the report of the Special Master, and thereupon the Court entered a decree on October 2nd, 1951, granting a divorce to the defendant Armstrong herein.

In her amended petition, the plaintiff alleged that in 1914, she and the defendant Armstrong started a business in which she furnished the greater part of the capital, which business was continued through their joint efforts before and after their marriage, resulting in the accumulation of property in their ownership, a part of which consisting of certificates of stock, specifically described, in six corporations issued in the name of defendant Armstrong, which the plaintiff has in her possession in Hamilton County, Ohio, but which are unendorsed by the defendant, Armstrong. She also alleges that the defendant corporations which issued said certificates will not cancel them and reissue them, without the order of a court, and, for that reason, they are made parties, so that the court may award to her such alimony as the court may deem reasonable and proper. Her prayer was for divorce and alimony.

The defendant Armstrong by answer denied that the allegations in his complaint and the testimony he gave in his action in the Eleventh Judicial Circuit in and for Dade County, Florida, was false, denied that defendant therein was not served with summons and alleged, to the contrary, that said defendant was duly served in accordance with the law of Florida, and, by reason thereof, the Court had full jurisdiction over both the subject matter and the persons of the plaintiff and defendants.

The defendant Armstrong denied that he had been guilty of gross neglect of duty or extreme cruelty, denied that

plaintiff had been a dutiful and faithful wife, denied that she had assisted in any way in the accumulation of property, but that such property was accumulated by his own efforts, and that much of said property had been placed in their joint names solely because of the plaintiff's insistence, and that in various ways from such properties in their joint names she has received and will receive substantial sums. He also alleges that the withdrawal by the plaintiff of his property from the safety deposit box constituted embezzlement under the laws of Florida, of which he asked the Court to take judicial notice.

The defendant's answer contained a general denial of all of plaintiff's amended petition of good conduct on her part and misconduct on his part, and concludes with a prayer that her amended petition be dismissed and that she be required to deliver to him all the certificates of stock and jewelry in her possession, and that the court make an equitable division of the money withdrawn from their joint bank accounts.

A reply placed in issue all the affirmative allegations of the answer.

At the trial of these issues, evidence was introduced from which the conclusion could be reasonably deduced that the plaintiff in this action had been guilty of gross neglect of duty and extreme cruelty, and that the Florida decree, granting a divorce to the defendant herein, was supported by sufficient evidence. On the other hand, evidence of equal cogency was introduced from which it could be deduced that he had been guilty of gross neglect of duty and extreme cruelty, and that the decree awarding a decree to the plaintiff herein outweighed the evidence of the defendant, and would have justified a divorce in her favor. At any rate, this Court would not be justified in reversing the decree in her favor on the ground that it was manifestly against the weight of the evidence.

The complete record of the action in which the divorce was granted to the defendant herein by the Florida Court was introduced at the trial in this case. This record includes the bill of complaint, the amendment to the bill, a complete transcript of the testimony taken before the Special Master, the Special Master's report, and the final decree. From this record, it is manifest that the plaintiff in that case sought to vest the court with jurisdiction not only over the marital status, so that it might be dissolved, bu also endeavored to bring all the property and property rights, both real and personal, wherever located, within the Court's jurisdiction. The decree that was entered was equally broad. By it, the plaintiff in that action was granted a divorce on the ground of gross neglect of duty and extreme cruelty, was awarded title to all the real estate and personal property within the territorial jurisdiction of the Court, the defendant was found to have forfeited all right to alimony, and was ordered to return all property she had taken from the bank accounts and safety deposit vaults, and was enjoined from interfering with plaintiff's right to such property. The court recited that it took notice that some property was located in Ohio, and, for that reason, the Ohio courts would determine the rights in such property, and, in view of that situation, made a specific finding that both parties were and had been for many years citizens and residents of the State of Florida, that the matrimonial domicile was in the State of Florida, and that the plaintiff herein left the matrimonial domicile without right in 1950, and had no right to establish a legal domicile elsewhere, and that in law and fact her domicile was still that of her husband in the State of Florida.

The record shows (and it is admitted) that this decree was entered upon constructive service alone. The defendant was not served with any process within the territorial jurisdiction of the court and she did not enter her appear-

ance in any way. The decree was entered pro confesso on her failure to appear or answer.

In the decree in the case at bar, the court expressly stated that it gave full faith and credit to the decree of divorce of the Florida Court, and, for that reason alone, denied to the plaintiff a divorce to which she would otherwise have been entitled. The court then found that the plaintiff was entitled to alimony, as prayed for, and awarded to her all the money and bonds taken by her from their joint accounts and vaults, all the jewelry and 1,250 shares of stock in General Motors Corporation. It would appear that the Court divided their property in equal shares between them.

It is manifest that the attack upon the judgment here under review results from divergent views as to the force and effect of the judgment of the Florida Court under Article IV of the Constitution of the United States, commonly referred to as the "full Faith and Credit Clause" which requires each state to give full faith and credit to the public acts, records, and judicial proceeding of every other state. The plaintiff's contentions are, that the Florida decree was obtained by fraud and perjury, which rendered it voidable by a decree of a court of chancery, and, that, therefore, it is equally vulnerable in an Ohio court of general jurisdiction, and, therefore, the Florida decree after giving it all the force and effect accorded to it by the law of that state, it is no bar to a judgment awarding her a divorce in this action. In the next place, she contends that even assuming that the divorce decree dissolved the marriage tie, and is invulnerable to attack in this action, it is, nevertheless, no bar to her action for alimony.

On the other hand, the defendant contends that as the divorce was granted to him by a court of the matrimonial domicile, from which the plaintiff had departed in violation of her marital duties, as found by that court, the decree

completely and finally dissolved the marriage ties, including also all the rights and duties of the parties incident thereto, and that the decree entered by the Florida Court expressly so provided by barring the plaintiff of all such rights.

In support of her position that the Florida divorce is no bar to the plaintiff's action for divorce, plaintiff's counsel relies upon certain Florida cases indicating that a decree of divorce by a Florida court obtained by fraud may be vacated, perhaps by the court granting it, by invoking the common law writ of coram nobis, or some statutory variation of that writ, or by an independent suit in chancery. It is not suggested that any such proceeding has been instituted. In our opinion the mere existence of such a remedy does not deprive the divorce decree of that quality of finality, entitling it to full faith and credit by the courts of other states, enjoined by the Constitution of the United States. Even the fact that this judgment might be subject to an appeal or that the time for filing a motion to vacate or for a new trial had not expired would not affect its finality or deprive it of the right to full faith and credit. 31 Am. Jur., 167 (Sec. 558). The judgment of the Florida court is, nevertheless, a final decree for divorce within the jurisdiction of the court granting it, to which full faith and credit must be given so long as it remains unreversed, unmodified, and not vacated by the courts of the state in which it was awarded. It should be noted that the trial court made no express finding that the Florida decree had been obtained through fraud and deceit.

We, therefore, hold that the trial court did not err in refusing to enter a decree of divorce for the plaintiff.

The question remains as to the effect of this Florida judgment upon the right of the plaintiff to a decree awarding her alimony. The Florida court not only assumed to grant a divorce, but also to enter a decree barring the plaintiff

from all rights based on the marital relation. And, as already noted, this was done without personal service or an entry of appearance in the action by the defendant. We are of the opinion that this attempt to deprive the defendant of a right to alimony could add nothing to the jurisdiction of the court. It is an attempt to render a personal judgment upon constructive service. Unless the dissolution of the marriage tie had the effect of destroying all rights incident to the marriage relation, express recitals certainly would not accomplish that effect. The detailed findings that the plaintiff in this action had been, and was, a recreant wife, and of no help but a hindrance to the plaintiff in the accumulation of his wealth, made by the Florida Court to serve as a predicate for the mandatory and prohibitory injunctions expressly made enforceable by contempt proceedings, which were decreed can have no greater validity than the writs by which they were enforceable. As no court has jurisdiction to enjoin and punish for contempt in the absence of personal service upon the person enjoined, this decree insofar as it attempted to exercise such jurisdiction is null and void.

But defendant's counsel contend that this Florida decree, shorn of all provisions relating to alimony, is a bar to the plaintiff's claim for alimony. They assert that a decree for divorce granted on constructive service by a court of the matrimonial domicile has that effect. It is said that it has been so decided in *Atherton* v. *Atherton*, 181 U. S. 155, and *Thompson* v. *Thompson*, 226 U. S., 551, and the latter case was cited with approval in *Estin* v. *Estin*, 334 U. S. 541, at 545. While attempts have been made to distinguish and limit the effect of the cases of *Atherton* v. *Atherton* and *Thompson* v. *Thompson*, we are of the opinion that they support the proposition for which they are cited. But we are also of the opinion that it is

more accurate to say that *Thompson* v. *Thompson* was distinguished rather than approved in *Estin* v. *Estin*.

To give to the Court of the matrimonial domicile jurisdiction greater than that acquired elsewhere by one spouse, it was necessary to invoke the common law fiction that the wife's identity was merged in that of her husband and that the domicile of his choosing was her domicile. Relaxing this rule, as was done in some cases, so as to permit the wife to change her residence so as to confer jurisdiction elsewhere of her divorce action would permit the husband, remaining at the "matrimonial" domicile, to compel her to return to that jurisdiction to defend her conduct in leaving, or allow a default, and if that jurisdiction determined that her leaving was unjustified, it could proceed to bind her by a personal judgment. This monolithic conception of the relation between husband and wife has long since ceased to be valid. By statutes and court decisions, the relation has been so altered as to give the wife almost as great freedom of action as that of the husband. In Ohio, and in most other states, for the purpose of jurisdiction to entertain her action for divorce and alimony her right is not affected by the residence of her husband. RC § 3105.04. This development of the law, without doubt, influenced the Supreme Court in cases subsequent to *Thompson* v. *Thompson* to review the subject of matrimonial domicile in its relation to the "Full Faith and Credit Clause" of the United States Constitution, and to conclude that there was no distinction in that regard between matrimonial domicile and domicile acquired by either husband or wife acting separately.

This trend became manifest with the first case of *Williams* v. *North Carolina*, 317 U. S. 287, 143 A. L. R. 1273, in which the Court said at page 1281 of the latter report that: "Moreover so far as state power is concerned no distinction between matrimonial domicile and a domicile

later acquired has been suggested or is apparent." That the statement was made after due deliberation is manifest from the statement of the court in the second case of *Williams* v. *North Carolina*, 325 U. S. 226, at 230: "In view of *Williams* v. *North Carolina*, supra, the jurisdictional requirement of domicile is freed from confusing refinements about 'matrimonial domicile.'"

And in the more recent case of *May* v. *Anderson*, 345 U. S. 528, an action seeking custody of children, originating in Ohio, the Court reviewed and reversed the judgment of the Ohio Courts giving binding effect against the wife to a judgment rendered, upon constructive service only, by a Wisconsin court, which was the matrimonial domicile of the husband. At 534 the Supreme Court of the United States said: "In *Estin* v. *Estin*, supra, and *Kreiger* v. *Kreiger*, supra, this Court upheld the validity of a Nevada divorce, obtained, ex parte, by a husband resident in Nevada, insofar as it dissolved the bonds of matrimony. At the same time, we held Nevada powerless to cut off, in that proceeding, a spouse's right to financial support under the prior decree of another state. In this case we recognize that a mother's right to custody of her children is a personal right entitled to at least as much protection as her right to alimony." From this, it would seem that the Supreme Court of the United States regarded it as settled in that court that an ex parte decree is effective to dissolve the marriage tie, and that to that extent other states must accord to it full faith and credit. Beyond that, the power of the court to adjudicate property and personal rights is dependent upon seizure of property, or personal service of summons within the territorial jurisdiction of the court.

Certainly the Ohio courts understand that this is the doctrine of *Williams* v. *North Carolina*, 317 U. S. 287, as is made manifest by the case of *Slapp* v. *Slapp*, 143 Ohio St., 105. In that case, it appeared that the husband had ob-

tained an ex parte decree of divorce in Nevada, while an action for alimony was pending in Ohio, the state of their last residence before separation. After the divorce was granted, the wife filed an amended petition, adding a cause of action for divorce to her action for alimony. The trial court found that the Nevada divorce was null and void, and thereupon granted both divorce and alimony to the wife. On appeal by both parties the Court of Appeals "gave full faith and credit" to the decree of divorce in Nevada, and reversed that part of the judgment of the Common Pleas Court which awarded a divorce to the plaintiff, Ruth E. Slapp. On the other hand, the Court of Appeals affirmed that part of the judgment of the Common Pleas Court which awarded an equal division of the property to the plaintiff. The Supreme Court affirmed the judgment of the Court of Appeals.

It is true that the divorce decree under consideration in *Slapp v. Slapp*, supra, was not granted at the domiciliary residence. It is also true that in *Anderson* v. *May*, supra, the Ohio courts gave faith and credit to a divorce decree of the domiciliary residence awarding custody of children, but they did so not because the decree was at the plaintiff's domicile, but because they decided that the children were technically present within that jurisdiction, and, for that reason, within the power of the court. And, as already pointed out, the Supreme Court of the United States expressly declined to place its reversal on any disagreement with the Ohio courts on that point, preferring to place it on the fundamental proposition that the full faith and credit required of other states by the IVth Article of the United States Constitution to an ex parte decree was limited to the dissolution of the marriage status and did not extend to an adjudication or destruction of personal and property rights incidental to the marriage relation.

We, therefore, conclude that the Court of Common Pleas did not err in its holding that the ex parte decree in the Florida case was not a bar to the plaintiff's action for alimony.

The Court divided the property of these parties in substantially equal shares between them. We have examined the record as to the manner of its accumulation, the contribution of each of the parties thereto, and the facts and circumstances of their respective situations and needs. We find no error of the court in this regard.

We find no prejudicial error in the record.

For these reasons, the judgment is affirmed.

MATTHEWS, P. J., ROSS & HILDEBRANT, J. J., concur.

APPENDIX E

COURT OF APPEALS

HAMILTON COUNTY, OHIO

No. 7826

MARY R. ARMSTRONG,

Plaintiff-Appellee,

v.

RAYMOND C. ARMSTRONG,

Defendant-Appellant,

GENERAL MOTORS CORPORATION, et al.,

Defendants.

JUDGMENT OF AFFIRMANCE

(Entered March 16, 1954)

This cause came on to be heard upon appellant's notice of appeal, appellee's notice of cross appeal, the transcript of docket and journal entries, the original papers and pleadings, the bill of exceptions, the assignments of error by appellant and appellee and the briefs and arguments of counsel, from case No. A-131101, Court of Common Pleas, Hamilton County, Ohio; on consideration whereof, the Court finds that the judgment entered does not contravene the provisions of Article IV of the Constitution of the United States and that there is no error prejudicial to the defendant-appellant, or to the plaintiff appellee in the record, proceedings and judgment in the Court below.

It is therefore ordered that the judgment of the Court of Common Pleas of Hamilton County, Ohio in said cause

be and it is hereby affirmed at the costs of the defendant-appellant herein taxed at $

It is further ordered that a special mandate issue out of this Court directed to the Court of Common Pleas, Hamilton County, Ohio to carry the judgment of this Court into effect.

The plaintiff-appellee and the defendant-appellant are each allowed their exception.

APPENDIX F

IN THE

SUPREME COURT OF OHIO

No. 33956

ARMSTRONG,

Appellee and Cross-Appellant,

v.

ARMSTRONG,

Appellant and Cross-Appellee, et al.

Divorce and alimony—Service by publication—Divorce decree against nonresident—Entitled to full faith and credit, when—Portion of decree denying alimony—Does not operate extraterritorially—Not entitled to full faith and credit—Section 1, Article IV, U. S. Constitution.

1. A divorce decree obtained against a nonresident defendant solely upon service by publication, where such service is authorized in the state granting the divorce, is entitled, under Section 1, Article IV of the Constitution of the United States, to full faith and credit elsewhere, providing such service meets the requirements of due process and the plaintiff at the time of instituting the divorce proceeding was legally domiciled in the state granting the divorce.
2. Such a divorce decree in favor of a husband, based solely on service by publication on the wife residing in another state, does not, as to a denial of alimony therein, operate extraterritorially and is not entitled to full faith and credit in such other state.

(No. 33956—Decided December 15, 1954.)

APPEAL from the Court of Appeals for Hamilton County.

This cause is concerned with the subject of divorce and alimony and is here on an appeal as of right and on the allowance of a motion to require the Court of Appeals for Hamilton County to certify its record.

Raymond C. Armstrong, appellant, hereinafter referred to as Armstrong, secured a divorce, upon constructive service of summons, from Mary R. Armstrong, appellee,

hereinafter called Mrs. Armstrong, by the decree of a court in Florida. Embodied in the decree was a denial of alimony to her. Subsequently, in February 1952, she sued Armstrong for divorce and alimony in the Court of Common Pleas of Hamilton County, Ohio, claiming that Armstrong had procured his Florida divorce by fraud and misrepresentation. He entered his appearance by way of answer in which he denies many of the allegations of the petition. This was met by reply.

The cause was heard on considerable evidence and both the Armstrongs testified. Mrs. Armstrong was refused a divorce on the basis that Armstrong's Florida decree was conclusive, but she obtained an award of alimony. Such decree was affirmed on appeal by the Court of Appeals.

Mrs. Armstrong, in her cross-appeal, complains that she was erroneously denied a divorce in Ohio and the allowance of alimony *pendente lite* and expenses, whereas Armstrong contends that she was precluded from obtaining any alimony award in Ohio by reason of his Florida decree, which denies her the right to alimony.

It appears that both parties are natives of Ohio and were married in this state in 1917. They engaged in business here until the early 1920's when they sold the business and removed to Florida. Later, real property was bought on the Isle of Pines, and from 1925 to 1928 the Armstrongs occupied themselves in growing fruit and vegetables there. Then in 1928 they went to the City of Miami, Florida. Residence properties were purchased, into one of which they moved, and they became taxpayers and registered voters of that community.

However, they did not sever their ties with Ohio. Two farms, one in Indiana and one in this state, were purchased and the Armstrongs generally spent the summer months in Ohio looking after their property interests. The title to some of the property accumulated over the years was held

jointly, while other property was held by Armstrong individually.

Matrimonial difficulties developed between the Armstrongs, and in the summer of 1948, while they were at their Clermont County, Ohio, farm, an altercation occurred and Mrs. Armstrong departed. She took from a jointly held safety deposit box certain securities owned by Armstrong which she could not negotiate but kept and withdrew the major portion of a sizeable money deposit in a joint bank account. A reconciliation took place in a matter of weeks, and on September 27, 1948, at Asheville, North Carolina, Armstrong signed a written statement in which he assumed some blame for their domestic troubles.

Friction again developed between the Armstrongs, and in October 1950 Mrs. Armstrong left their Miami, Florida, home and returned to Ohio, where she remained.

On April 16, 1951, Armstrong filed suit for divorce in the Circuit Court of Dade County, Florida. Service by publication only was made on Mrs. Armstrong, but she employed an Ohio attorney and actually knew about the proceeding. However, she did not return to Florida and made no appearance in the suit. Subsequently, as has been noted, a decree of divorce was granted Armstrong, wherein Mrs. Armstrong was denied alimony and the title to the Florida real estate was vested in Armstrong. What transpired afterwards has previously been narrated.

Messrs. Headley, Sibbald & Taft, for appellee and cross-appellant.

Messrs. German, Silversteen & Davis, for appellant and cross-appellee.

ZIMMERMAN, J. From Armstrong's standpoint "the sole question in this case is whether the courts of Ohio, under Article IV of the Constitution of the United States, are compelled to give full faith and credit to the entire decree

for divorce rendered in Florida, the matrimonial domicile of the parties, which decree denied alimony to the wife, or whether the courts of Ohio can recognize the decree for divorce to the husband, but still award alimony to the wife."

Of course, Armstrong answers the first part of the question in the affirmative and the latter part in the negative.

In support of his position, Armstrong relies primarily on the case of *Thompson* v. *Thompson*, 226 U. S., 551, 57 L. Ed., 347, 33 S. Ct., 129.

In that case it was held that a court in Virginia, the matrimonial domicile of the parties, had jurisdiction to render a decree of divorce in favor of the husband on constructive service of summons on the wife, and that such decree was entitled to "full faith and credit" in the District of Columbia. It was further held that such decree foreclosed any right of the wife to sue for alimony in the District of Columbia for the reason that the holdings of the Virginia courts are that a wife who is the offender can not be allowed alimony on a divorce decree obtained by her husband.

The facts and situation in the *Thompson case* are not the same as those in the instant case. From a reading of the bill of complaint for divorce filed by Armstrong in the Circuit Court of Dade County, Florida, against his wife, it is plain that he charged her with conduct which in the divorce statutes of this state are termed "extreme cruelty" and "gross neglect of duty." No statute or decision in Florida has been called to our attention which states that a Florida court may not award alimony to a wife divorced by her husband because of her aggression, unless she has committed adultery. See *Cowan* v. *Cowan*, 147 Fla., 473, 2 So. (2d), 869. Compare *Fiesler* v. *Fiesler*, 83 Ohio St., 200, 93 N. E., 899.

It may be here interposed that since the decision of the United States Supreme Court in the case of *Williams* v.

North Carolina, 317 U. S., 287, 87 L. Ed., 279, 63 S. Ct., 207, 143 A. L. R., 1273, the factor of "matrimonial domicile" is no longer regarded as important: See annotation, 143 A. L. R., 1294.

The rule of general acceptance is that a divorce decree obtained against a nonresident defendant solely upon constructive service, if such service is authorized in the state granting the divorce, is entitled to full faith and credit elsewhere, providing such constructive service meets the requirements of due process and the plaintiff at the time of instituting the divorce proceeding was legally domiciled in the state granting the divorce. *Williams* v. *North Carolina*, *supra*; annotation, 28 A. L. R. (2d), 1306.

But may a divorce decree secured by a husband even in the so-called matrimonial domicile, where service of summons on the wife, then residing in another state, has been by publication only, deny the wife any right to alimony, so that such denial must be recognized as conclusive in another jurisdiction. We do not think so.

We would approve the rule that such a decree as it concerns the denial of alimony to the wife is not entitled to full faith and credit in another state. A decree of that kind is one *in personam* and requires either an appearance by, or lawful personal service on, the wife, in order to have extraterritorial effect. In other words, in a situation of the kind under discussion, that part of the decree granting a divorce may be immutable, but that part which purports to fix alimony rights is not, and alimony may be the subject of adjudication in the court of another state at a future time. What has been said finds sanction in the Ohio cases of *Cox* v. *Cox*, 19 Ohio St., 502, 2 Am. Rep., 415; *Doerr* v. *Forsythe, Admx.*, 50 Ohio St., 726, 35 N. E. 1055, 40 Am. St. Rep., 703; *Weidman* v. *Weidman*, 57 Ohio St., 101, 103, 48 N. E., 506, 507; *Bay* v. *Bay*, 85 Ohio St., 417, 426, 427, 98 N. E., 109, 110; and *Slapp* v. *Slapp*, 143 Ohio St., 105, 54 N. E. (2d), 153.

Although not directly in point from a factual standpoint, we believe the following cases also lend support to the position we have taken: *Estin* v. *Estin*, 334 U. S., 541, 92 L. Ed., 1561, 68 S. Ct., 1213, 1 A. L. R. (2d), 1412; and *May* v. *Anderson*, 345 U. S., 528, 97 L. Ed., 1221, 73 S. Ct., 840. And see the concurring opinion of Mr. Justice Douglas in *Esenwein* v. *Pennsylvania, ex rel Esenwein*, 325 U. S., 279, 89 L. Ed., 1608, 65 S. Ct., 1118, 157 A. L. R., 1396.

In the case of *Pawley* v. *Pawley* (Florida), 46 So. (2d), 464, 28 A. L. R. (2d), 1358, certiorari denied, 340 U. S., 866, 95 L. Ed., 632, 71 S. Ct., 90, the husband secured a Cuban decree of divorce against his wife, a resident of Florida, on the ground of desertion, which constitutes a ground for divorce in Florida. Personal service of notice of the action was made on the wife in Florida. The Supreme Court of Florida recognized the Cuban decree as valid under the principles of comity but held that the Cuban court did not and could not pass upon the right of the wife to alimony since no personal jurisdiction had been secured over her, and that, therefore, she was not barred from maintaining an action for alimony in Florida.

Consequently, we are in agreement with the judgments of both the lower courts herein. Armstrong's Florida divorce decree dissolved the marriage relation between him and his wife, and Mrs. Armstrong could not thereafter successfully maintain an action in Ohio to have that decree set aside and to obtain a divorce for herself in this state; but the Florida court had no jurisdiction over the person of Mrs. Armstrong and that court could not by its decree effectively preclude her from obtaining an alimony award in Ohio.

The judgment of the Court of Appeals is affirmed.

Judgment affirmed.

WEYGANDT, C. J., MIDDLETON, TAFT, HART, STEWART and LAMNECK, JJ., concur.

APPENDIX G

IN THE

SUPREME COURT OF OHIO

No. 33956

MARY R. ARMSTRONG,

Plaintiff-Appellee,

v.

RAYMOND C. ARMSTRONG,

Defendant-Appellant;

GENERAL MOTORS CORPORATION, et al.,

Defendants-Appellees.

JUDGMENT OF AFFIRMANCE

(Entered December 15, 1954)

This cause came on to be heard upon the transcript of the Record of the Court of Appeals of Hamilton County, and was argued by counsel. On consideration whereof, it is ordered and adjudged by this court, that the judgment of the said Court of Appeals be, and the same is hereby, affirmed; and it appearing to the court that there were reasonable grounds for this appeal it is ordered that no penalty be assessed herein.

It is further ordered that the appellees recover from the appellant their costs herein expended taxed at $.

ORDERED, That a special mandate be sent to the Court of Common Pleas of Hamilton County, to carry this Judgment into Execution.

ORDERED, That a copy of this entry be certified to the Clerk of the Court of Appeals of Hamilton County, "for entry."

DENIAL OF RE-HEARING

(Entered January 5, 1955)

Upon consideration of the above application for hearing, it is ordered by the Court that rehearing be, a the same hereby is, denied.